

United States District Court

for the

Southern District of West Virginia

**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**
(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: Matthew A. Leavitt

Case Number: 2:09CR00150

Name of Sentencing Judicial Officer: Honorable Joseph R. Goodwin, Chief United States District Judge; case reassigned to the Honorable Thomas E. Johnston, United States District Judge

Date of Original Sentence: October 22, 2009

Original Offense: 18 U.S.C. § 242, Deprivation of rights under color of law

Original Sentence: Twenty-four months' imprisonment followed by two years' supervised release

Type of Supervision: Supervised Release Date Supervision Commenced: August 9, 2011

PETITIONING THE COURT

- ☐ To extend the term of supervision for years, for a total term of years.
☒ To modify the conditions of supervision as follows:

The defendant, Matthew Leavitt, shall be incarcerated for one weekend at the nearest available local facility, as designated by the Bureau of Prisons, in the month of July 2012, for a period of forty-eight hours beginning at 6:00 p.m. on Friday, and ending at 6:00 p.m. on Sunday.

CAUSE

1. **Violation of standard condition: The defendant shall not commit another federal, state or local crime:**

On March 4, 2012, the offender was arrested by the Dunbar Police Department, in Dunbar, West Virginia, for driving under the influence of alcohol.

2. **Violation of standard condition number seven: The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician:**

On March 5, 2012, the offender admitted drinking alcohol excessively on the night of March 3, 2012, and in the early hours of March 4, 2012.

RE: Matthew Leavitt
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Mr. Leavitt began his term of supervised release on August 9, 2011.

On February 23, 2012, Mr. Leavitt reported to the probation office to inform this officer that he was separated from his wife and that he was changing residences. This officer inquired about Mr. Leavitt's usage of alcohol, and he admitted that he had been drinking a lot. Mr. Leavitt was referred to Pyramid Counseling for substance abuse treatment. His first appointment was scheduled for March 4, 2012.

On March 5, 2012, this officer was notified that Mr. Leavitt had been arrested for Driving Under the Influence (DUI) in Dunbar, West Virginia, on March 4, 2012. According to the police report, Mr. Leavitt was found unresponsive behind the wheel of his vehicle, on the I-64 eastbound exit ramp in Dunbar, West Virginia. The vehicle at the time was running and the transmission was in "drive". Mr. Leavitt did not wake up for approximately forty-five seconds, and when he did wake, the officer could smell alcoholic beverage emitting from his facial area. When asked by the officer if he was intoxicated, Mr. Leavitt shook his head up and down. Mr. Leavitt admitted to drinking "several" alcoholic beverages and stated that he was "just trying to make it home." After Kanawha County EMS arrived, the defendant exited the vehicle and was very unsteady on his feet. His speech was extremely slow, slurred and his eyes were glassy and bloodshot. Mr. Leavitt refused to perform field sobriety tests and a preliminary breath test. He was placed under arrest for DUI. Once under arrest, Mr. Leavitt refused to submit to a secondary breath test or a blood draw.

On March 5, 2012, Mr. Leavitt called this officer to report the arrest. He was directed to report to the probation office that date. Mr. Leavitt advised that he attended his substance abuse counseling session on March 4, 2012. After the session he began drinking alcohol at a bar in Charleston, and then later at a friend's home located in Winfield. Mr. Leavitt appeared to become very distraught, and pleaded with this officer to allow him to get help for his alcohol problem. Mr. Leavitt was referred to the Veterans for Justice inpatient substance abuse treatment program.

On April 18, 2012, Mr. Leavitt completed the inpatient substance abuse treatment program at the Chillicothe, Ohio, Veterans Medical Center. Mr. Leavitt continues to attend outpatient substance abuse treatment with both the Veterans Affairs Center and with Pyramid Counseling.

On May 30, 2012, Mr. Leavitt pled guilty to driving under the influence, first offense. Mr. Leavitt was placed in the DUI Deferral Program, and fined \$100 plus court costs, owing a total of \$315.80.

Mr. Leavitt has appears to have taken responsibility for his actions, and has shown remorse for his new criminal behavior. Mr. Leavitt and this officer have agreed that it would be an appropriate sanction for Mr. Leavitt, should the Court agree to have his supervised release conditions modified as follows:

The defendant, Matthew Leavitt, shall be incarcerated for one weekend at the nearest available local facility, as designated by the Bureau of Prisons, in the month of July 2012, for a period of forty-eight hours beginning 6:00 p.m. on Friday, and ending at 6:00 p.m. on Sunday.

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Mr. Leavitt was informed that further violations, especially those relating to alcohol and driving under the influence, will not be tolerated and would likely result in this officer requesting Court action.

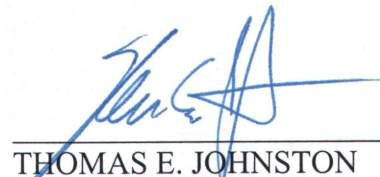
Respectfully submitted,



Troy A. Lanham
United States Probation Officer
June 28, 2012

THE COURT ORDERS:

- ☐ No action
- ☐ The issuance of a summons
- ☐ A hearing be scheduled in this matter
- ☐ Other
- ☒ The modification of conditions as noted above



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE

June 29, 2012

Date

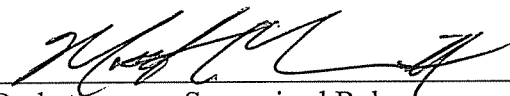
Waiver of Hearing to Modify Conditions
of Probation/Supervised Release or Extend Term of Supervision

UNITED STATES DISTRICT COURT
for the
SOUTHERN DISTRICT OF WEST VIRGINIA

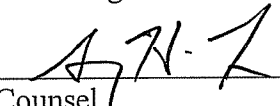
MATTHEW LEAVITT, DOCKET NO. 2:09CR00150

I, **Matthew A. Leavitt**, have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my conditions of probation and supervised release or before my period of supervision is extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the Court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing. I further understand that I may waive my right to a hearing after conferring with counsel or by making such waiver before a United States Magistrate Judge.

MAL I acknowledge that I have conferred with counsel prior to executing this waiver and I hereby willingly, knowingly, and voluntarily waive my statutory right to a hearing and agree to the following modification(s) of my conditions of probation or supervised release, or to the proposed extension of my term of supervision.

 27 June 2012
Probationer or Supervised Releasee Date

I acknowledge that I have conferred with the defendant prior to the defendant executing this waiver of hearing.

 6/27/12
Counsel Date

The defendant, Matthew Leavitt, shall be incarcerated for one week-end at the nearest available local facility, as designated by the Bureau of Prisons, in the month of July, 2012, for a period of 48 hours beginning 6 p.m. on Friday and ending at 6 p.m. on Sunday.